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PATENT
Docket No.: 021305-003900US
Client Ref. No.: 006-140-US33

TOWNSEND and TOWNSEND and CREW LLP

By: *Linda Lim*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Mark MATTEUCCI et al.

Patent No.: 7,550,496

Issued: June 23, 2009

Application No.: 10/549,545

Filed: May 26, 2006

For: COMPOSITIONS AND METHODS
FOR TREATING CANCER

Customer No.: 20350

Confirmation No.: 1659

Examiner: Rei Tsang Shiao

Art Unit: 1626

REQUEST FOR
RECONSIDERATION OF PATENT
TERM ADJUSTMENT
DETERMINATION UNDER 37
C.F.R. §1.705(d)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Commissioner:

Pursuant to 37 C.F.R. §1.705(d), Applicants respectfully request reconsideration of the patent term adjustment determination. This request is accompanied by the fee set forth in §1.18(e) and a statement of facts as required under 37 C.F.R. §1.705(b)(2).

In view of the following, it is respectfully requested that Applications be granted a corrected patent term adjustment of **416 days**.

Statement of Facts as Required under 37 C.F.R. §1.705(b)(2)

The correct patent term adjustment is 416 days and not 78 days as stated on the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) mailed on June 3, 2009, with the Issue Notification and listed on the front page of U.S. Patent No. 7,550,496.

The period of adjustment under §1.702(a) is 284 days (“A delay”).

The period of adjustment under §1.702(b) is 268 days (“B delay”).

The period of adjustment under §1.704(a) is 136 days (“applicant delay”).

The period of adjustment under §1.703(f) is 416 days.

The Relevant Dates as Specified in 37 C.F.R. §§1.703(a)-(e), §1.704 and the Adjustment Specified in 37 C.F.R. §1.703(f)

1. §1.703(a)

Applicants are in agreement with the Patent Office’s determination of a period of adjustment of 284 days under 37 C.F.R. §1.703(a).

2. §1.703(b)

The Patent Office failed to issue a patent within three years of the actual filing date of the above-referenced application. The period of adjustment under 37 C.F.R. §1.702(b) begins on the day after the date that is three years from the 35 U.S.C. 371(b) filing date of the instant application, September 28, 2008, and ends on June 23, 2009, the date the patent was issued. Thus, the effective period of adjustment under 37 C.F.R. §1.702(b) is **268 days** as shown in the table below.

Filing Date (371(b))	3-Year Date	Date Patent Issued	Days over 3 years through Patent Issuance
September 28, 2005	September 28, 2008	June 23, 2009	268 days

3. §1.703(c)-(e)

There are no relevant dates as specified under §§1.703(c)-(e).

4. Overlapping periods under §1.703(a)-(e)

Applicants have calculated overlapping periods in accordance with *Wyeth v. Dudas* (88 U.S.P.Q.2d 1538 D.D.C. 2008). Periods of delay under 35 U.S.C. §154(b)(1)(A) and 35 U.S.C. §154(b)(1)(B) overlap only if they occur on the same calendar day or days (*see Wyeth*). There are no overlapping periods under §1.703 (a)-(e).

5. Reduction of Period of Adjustment of Patent Term Under 37 C.F.R. §1.704

Applicants dispute the calculation by the Patent Office of the period of adjustment under §1.704(a) as a total of 206 days indicated by the attached Patent Term Adjustment History (*see Exhibit A*).

1. Amendment after Notice of Allowance (Rule 312)

The Patent Office has incorrectly issued 72 days of applicant delay for this action. Applications filed the Amendment after Notice of Allowance on April 13, 2009. The Examiner issued a Response to Amendment under Rule 312 on April 15, 2009. Accordingly, the correct period of adjustment is 2 days and not 72 days as determined by the Patent Office as stated in the table below. (*see 37 C.F.R. 1.704(10)(i)*).

Date of Notice of Allowance	Date of Amendment after Notice of Allowance	Date of Response to Amendment under Rule 312	Days of adjustment
April 4, 2009	April 13, 2009	April 15, 2009	2 days

The correct period of adjustment under §1.704(a) is **136 days**.

6. **§1.703(f)**

The period of adjustment under 37 C.F.R. §1.702(f) is as follows:

Type "A" delay:	284 days
Type "B" delay:	268 days
"A" and "B" overlap:	0 days
Applicant delay:	136 days
<u>Adjusted:</u>	<u>416 days</u>

Terminal Disclaimer

The instant application is not subject to a terminal disclaimer at this point.

Statement under 37 C.F.R. §1.705(d)

The instant patent issued on June 23, 2009, and Applicants submit that this request for reconsideration of patent term adjustment is being filled within the two-month time frame set forth under 37 C.F.R. §1.705(d).

Patent Term Adjustment Determination

Pursuant to *Wyeth*, Applicants are entitled to 416 days of patent term adjustment,
i.e.:

[552 days (A delay + B delay) minus 0 (overlap days)] minus [136 days
(applicant delay)].


Based on the foregoing, Applicants respectfully request reconsideration of the patent term adjustment determination.

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Please charge the fee set forth in 37 C.F.R. §1.18(e) (\$200.00) to Deposit Account No. 20-1430. Please charge any necessary additional fees or credit any overpayments to the above-noted Deposit Account.

Respectfully submitted,



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